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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,086	04/10/2006	Thomas Mannebach	002097	8726
23456 7590 08/05/2009 WADDEY & PATTERSON, P.C. 1600 DIVISION STREET, SUITE 500 NASHVILLE, TN 37203			EXAMINER SINGH, SUNIL	
			ART UNIT 3672	PAPER NUMBER
			NOTIFICATION DATE 08/05/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@IPLAWGROUP.COM  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/575,086	<b>Applicant(s)</b> MANNEBACH ET AL.	
	<b>Examiner</b> Sunil Singh	<b>Art Unit</b> 3672	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 15-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 15-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: The specification should not refer back to claims, such as claim 1 etc., since the scope of the claims can change during prosecution thus making such reference inaccurate. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8-10,11,27 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 calls for “a lifting device”, however, claim 7 calls for “a lifting device”; it is unclear how they are related.

Claim 8 is confusing because it is not clear what is meant by both front ends.

Claim 10 is confusing because it is not clear how one lever arm is connected to a free end of the pull rods. It appears that it should be connected to a free end of one of the pull rod.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1,2,4, 5,6,12,16,18,20,21 rejected under 35 U.S.C. 103(a) as being unpatentable over Swisher, Jr. '147 in view of Simms et al. (US 3387891)

Swisher, Jr. '147 discloses an automotive stabilizer or recycler (10) for producing carriageways by stabilizing insufficiently stable soils or by recycling road surfaces, with a machine chassis (12) supported by a running gear (14) having two axles a milling drum (56) mounted between the two axles of the running gear (14) adapted to be pivoted in relation to the machine chassis (12), a shaft of the milling drum is mounted in pivoting arms (19,54) and runs transversely to the direction of travel, a cover (18) surrounding the milling drum (20), a combustion engine (24) supported by the machine chassis (12) with at least one output shaft (64) for the drive power required for driving the milling drum (56), whereby at least one mechanical power transmission device (see Fig. 1) transfers the drive power from the output shaft to the milling drum (56), the at least one mechanical power transmission device (see Fig.1), together with the milling drum (56 )are carried by the pivoting arms (19,54), and the pivoting arms are pivoted for rotation about the axis of an output shaft (see shaft linked to member 62) linked to the combustion engine (24). Swisher, Jr. '147 discloses the invention substantially as claimed. However, Swisher, Jr. 147 lacks a combustion engine fixed to a machine chassis between pivoting arms, and the at least one output shaft being arranged

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transversely to the direction of travel. Simms et al. teaches a combustion engine (56) fixed to a machine chassis (12) between pivoting arms (14), and the at least one output shaft being arranged transversely to the direction of travel. It would have been considered obvious to one of ordinary skill in the art to modify Swisher, Jr. '147 by substituting an engine/output shaft arrangement as taught by Simms et al. for the PTO/transmission/differential arrangement as disclosed by Swisher, Jr. '147 since such an arrangement allows for an independent control of the cutter as well as reduce the load placed on engine (24).

With regards to claim 5, it would have been considered obvious to modify Swisher, Jr. '147 to include a transversely movable operator's platform since such an arrangement allows for better view while cutting.

6. Claims 3,15,17,19 rejected under 35 U.S.C. 103(a) as being unpatentable over Swisher, Jr. '147 in view of Simms et al. as applied to claims 1,2 above, and further in view of Swisher, Jr. (US 5190398).

Swisher, Jr. '147 (once modified) discloses the invention substantially as claimed. However, the (once modified) Swisher, Jr. '147 is silent about including a clutch. Swisher, Jr. '398 teaches a clutch (154). It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Swisher, Jr. '147 to include a clutch as taught by Swisher, Jr. '398 in order to be able to disengage the engine from the cutter.

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7. Claims 7-11,22,23,24,25,26,27 rejected under 35 U.S.C. 103(a) as being unpatentable over Swisher, Jr. '147 in view of Simms et al. as applied to claim 6 above, and further in view of Allin (US 2111134).

Swisher, Jr. '147 (once modified) discloses the invention substantially as claimed.

However, the (once modified) Swisher, Jr. '147 is silent about including a lifting device having a link mechanism. Allin teaches a lifting device having a link mechanism (26,34',34,50,40). It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Swisher, Jr. '147 by substituting the lifting device as taught by Allin for the lifting device disclosed by Swisher, Jr. '147 since it is obvious to substitute equivalent parts for performing equivalent functions.

### ***Response to Arguments***

8. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on (571) 272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sunil Singh/  
Primary Examiner, Art Unit 3672

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Primary Examiner  
Art Unit 3672

SS 8/1/09

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